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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,768	02/09/2004	Gregory Ashton	9490	9760
27752	7590	12/01/2005	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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Commissioner for Patents

Office Action Summary

Application No.

10/774,768

Applicant(s)

ASHTON ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on 12 October 2005. These replacement drawings are acceptable and the previous objection to the drawings is hereto withdrawn.

Claim Language Interpretation

2. A 'stratum' as recited in claim 4 is given its plain meaning of 'a thin layer within any structure' (see Oxford online dictionary 2004).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kling et al. (US 6,213,991; herein 'Kling'). Regarding claim 1 Kling discloses pull-on pant diaper with gripping means for assisting the application of the article onto a wearer (column 1, lines 26-30, column 4, lines 6-14) comprising diaper 1 with a sidewall disposed adjacent a chassis (column 6, lines 30-36); said sidewall comprising side panel 13 (figure 1), and at least one fastener element/handle 23 disposed adjacent either the chassis or sidewall (column 9, lines 1-3, figures 1-3).

Regarding claim 2 Kling discloses absorbent body 10 located between liquid impermeable barrier layer/top sheet 9 and liquid permeable outer material/back sheet 11 (column 11, lines 64-67).

Regarding claim 3 Kling discloses outer material/back sheet 11 may be non-woven (column 7, lines 11-14).

Regarding claim 4 Kling discloses handle 23 is a flap 25 comprising a stratum, wherein the flap 25 forms a pocket/gap 26 between the stratum and the chassis (column 9, line 59-column 10, line 1, figure 2).

Regarding claims 5-6 Kling discloses edge 25d of flap 25 is joined to pants layer 12 and thus comprises a unitary and multiple construction (column 9, lines 23-30).

4. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nomura et al. (US 5,163,932; herein 'Nomura'). Regarding claim 1 Nomura discloses disposable pants type absorbent wearing article (column 1, lines 32-33) comprising: at least one sidewall with side edges/ear panels (column 4, lines 37-39), and at least one grip ear/handles 20A, 20B (column 5, lines 43-50).

Regarding claim 4 Nomura discloses handles 20A, 20B are flaps comprising a stratum, wherein the flap forms a gap between the stratum and article chassis (figures 1 and 4).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kling et al. (US 6,213,991; herein 'Kling') in view of Olson (US 2002/0099353; herein 'Olson'). Kling *does not expressly disclose* an instruction to the caregiver. **Olson** discloses absorbent training pant 20 comprising: at least one side panel 34 and at least one

fastening system/handle 80 capable of positioning the training pant on a wearer disposed adjacent chassis 32 and sidewall 36 (page 7, paragraph 0097, lines 4-5; paragraph 0098, lines 1-3; page 10, paragraph 0120; figures 1 and 2). Olson further discloses wetness-indicating graphics that is capable of transitioning an infant to proper toilet use since the graphics provide a visual cue to the infant of when urination has occurred within the training pant (page 8, paragraph 0105, lines 1-13, figure 1). Olson further discloses written instructions in combination with the training pant 20 that forms a kit (page 8, paragraph 0105, lines 14-15). One would be motivated to modify the absorbent article with flap of Kling with the kit and instructions of Olson to enable the user to determine proper absorbent article use since both references are in the same field of endeavor; pull-on absorbent garments for absorbing bodily waste. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent article, thus providing a kit with instructions for the caregiver.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kling et al. (US 6,213,991; herein 'Kling') in view of Dragoo et al. (US 6,229,061; herein 'Dragoo'). Kling *does not expressly disclose* a kit containing more than one absorbent article with a readily accessible handle. **Dragoo** discloses absorbent diaper/training pants 20 comprising containment assembly/chassis 32; at least one extensible side panel/side wall 30 adjacently disposed to chassis 32; and at least one ear flap/handle 62 adjacent chassis 32 capable of assisting the wearer in application of the article 20 (col. 3, ll. 10-14, col. 4, ll. 20-25, col. 4, ll. 1-5, col. 8, ll. 66-col. 9, line 7, figure 1). Dragoo further discloses a plurality of disposable diapers 20 and inserts 10 packaged in

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the same package with an easy-opening device 225 on the package, the package thereby forming a kit (col. 12, ll. 39-41, figure 4) having handle 62 capable of being readily accessible from the kit because the packaging that forms the kit facilitates user gripping of the individual diaper 20 from the package. [Note the recitation 'readily accessible' does not limit the handle to being the first element exposed upon opening the kit.] If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). One would be motivated to modify the absorbent article of Kling with the kit with readily accessible handle to enable the user to easily grab the diaper since both references are in the same problem-solving area; absorbent articles for transitioning an infant to toilet use with handles for article application. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent article, thus providing a kit with a plurality of absorbent articles with readily accessible handle.

Response to Arguments

Applicant's arguments with respect to claims 1-6 and 21-22 (see Remarks pages 7-11) have been considered but are moot in view of the new ground(s) of rejection as discussed above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ashton et al. (US 6,443,940) is cited for showing tear open tab 31

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that facilitates tearing open at seams 32 after absorbent pull-on garment 20, 120 is soiled and shows extensible ear panels 45 in the chassis.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISOR / PRIMARY EXAMINER

